MONTANA LEGISLATIVE HISTORY

Chapter 210 1991

Bill H 610 S _____ Original bill & history X C

H. Committee on Judiciary

Hearing Date(s) 2/11/91 ___C

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_____ ___C

_____ ___C

Date Out 2/13/91 ___C

S. Committee on Business & Industry

Hearing Date(s) 3/11/91 ___C

_____ ___C

_____ ___C

3/12/91 ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

House Floor

2/14 2nd Reading (passed)
2/19 3rd Reading (passed)

Senate Floor

3/14 2nd Reading (concurred)
3/15 3rd Reading (concurred)

Date compiled Jan 27, 2016
Compiled by SJL

HB 609 INTRODUCED BY REAM, ET AL.
BILL PROVIDING SALARY INCREASE FOR STATE TAX APPEAL BOARD

2/05	INTRODUCED		
2/05	REFERRED TO TAXATION		
2/05	FIRST READING		
2/05	FISCAL NOTE REQUESTED		
2/06	REREFERRED TO APPROPRIATIONS		
2/11	FISCAL NOTE RECEIVED		
2/12	FISCAL NOTE PRINTED		
3/12	HEARING		
3/23	TABLED IN COMMITTEE		

HB 610 INTRODUCED BY BRADLEY, ET AL.
CLARIFY ALTERNATIVE REGULATION OF
TELEPHONE LOCAL EXCHANGE COMPANIES

2/05	INTRODUCED		
2/05	REFERRED TO JUDICIARY		
2/05	FIRST READING		
2/11	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	98	1
2/19	3RD READING PASSED	96	4
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & INDUSTRY		
3/11	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	48	0
3/15	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 210	EFFECTIVE DATE: 3/27/91	

HB 611 INTRODUCED BY SCHYE
REVISE ANTELOPE LICENSE DRAWING TO SET ASIDE A
PORTION FOR NONRESIDENT USING OUTFITTER

2/05	INTRODUCED		
2/05	REFERRED TO FISH & GAME		
2/05	FIRST READING		
2/14	HEARING		
2/19	TABLED IN COMMITTEE		

HB 612 INTRODUCED BY SPRING, ET AL.
ALLOW AGRICULTURE DEPARTMENT AGENT TO OBTAIN
LIVESTOCK SECURITY INFORMATION FROM
LIEN FILING SYSTEM

2/05	INTRODUCED		
2/05	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/05	FIRST READING		
2/13	HEARING		
2/15	TABLED IN COMMITTEE		

HB 613 INTRODUCED BY ELLISON, ET AL.
ESTABLISH THIRD WEEK OF SEPTEMBER AS OFFICIAL
OBSERVANCE OF MONTANA'S HUNTING HERITAGE

2/05	INTRODUCED		
2/05	REFERRED TO FISH & GAME		
2/05	FIRST READING		
2/12	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	90	6
2/19	3RD READING PASSED	89	9
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO FISH & GAME		
3/07	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	33	14
4/04	3RD READING CONCURRED	43	7
	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 455	EFFECTIVE DATE: 10/01/91	

HB 614 INTRODUCED BY COBB
FUND HEALTH INSURANCE FOR CHILDREN OF LOW-INCOME FAMILIES

2/05	INTRODUCED		
2/05	REFERRED TO TAXATION		
2/05	FIRST READING		
3/07	HEARING		
3/22	TABLED IN COMMITTEE		

HB 615 INTRODUCED BY THOFT, ET AL.
ALLOW 3-DAY NONRESIDENT SHOOTING PRESERVE
BIRD HUNTING STAMP AND REVISE SEASON

2/05	INTRODUCED		
2/05	REFERRED TO FISH & GAME		
2/06	FIRST READING		
2/06	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/11	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
3/07	2ND READING PASSED	93	2
3/09	3RD READING PASSED	89	5
	TRANSMITTED TO SENATE		
3/11	FIRST READING		
3/11	REFERRED TO FISH & GAME		
3/21	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	47	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/02	SIGNED BY SPEAKER		
4/02	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 371	EFFECTIVE DATE: 10/01/91	

HB 616 INTRODUCED BY PECK, ET AL.
APPROPRIATION TO CRIME CONTROL BOARD FOR
GRANTS TO CRIME PREVENTION PROGRAMS

HOUSE BILL NO. 610

INTRODUCED BY Bradley Mercer Jessica Mayer Kelly Lee Wyatt Harp Bob Brown Cyr Forbes Sharon Stewart-Peregoy Clarks Becker Whalen Hagan

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES; AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING; PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES; AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-802, MCA, is amended to read:

"69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services."

NEW SECTION. **Section 2.** Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in

INTRODUCED BILL HB 610

69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest; and

(f) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

LC 0576/01

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation. If a petition for alternative regulation is withdrawn, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter.

Section 3. Section 69-3-807, MCA, is amended to read:

"**69-3-807. Regulation of rates and charges.** (1) As to

~~that~~ telecommunications service ~~which~~ that is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of ~~such~~ the service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under ~~such~~ terms and conditions ~~as--may~~ that best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(e) provide such other rate or service regulation as will promote the purposes of this part.

(3) ~~In~~ Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative

providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) ~~such~~ other factors ~~as~~ that the commission may prescribe through rulemaking ~~which~~ that are appropriate to fulfill the purposes of this part.

(4) ~~Nothing---in---this--section--shall--authorize--the application-of-subsection-(2)--to--any--services--for--which there---are---no--alternative--providers--of--such--services~~ Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2) with respect to the services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Carrier access services may not be detariffed. Services detariffed under this subsection must be priced above relevant costs.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless

otherwise authorized by the commission. Nothing contained in this subsection may be construed to prohibit volume discounts, other discounts as long as the discounts are not offered in a discriminatory manner, or other discounts in promotional offerings.

~~(5)~~(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.

(7) The commission retains jurisdiction to consider complaints that prices charged for a service detariffed under this section are below relevant costs or violate a provision of this title."

Section 4. Section 69-3-808, MCA, is amended to read:

"**69-3-808. Forbearance of rate regulation to facilitate competition.** (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction,

lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application ~~shall~~ must describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with ~~such~~ other information and in ~~such~~ a form as that the commission may prescribe. ~~Such~~ The additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing ~~such~~ the service.

(3) The commission shall approve or deny ~~any--such~~ an application for forbearance of regulation to facilitate competition within ~~10~~ 15 days after the filing of the application~~,--except--that-the-commission-may-by-order-defer action-for-an-additional-5-day-period~~. If the commission has not acted on ~~any~~ an application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant. If a customer of the

provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the commission, the commission shall presume the existence of competition.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with ~~such~~ a person or an entity for the provision of ~~such~~ the service without regard to its tariffs on file and approved by the commission.

(6) Within 10 days after the conclusion of ~~such~~ the negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, the provider of regulated telecommunications service may provide ~~such~~ the service to the customer without regard to its tariffs on file and approved by the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission."

NEW SECTION. **Section 5.** **New service -- withdrawal of services.** (1) A provider of regulated telecommunications service shall provide the commission with notice of its

intent to offer a new service to its customers at least 14 days before the service is to be made available and shall provide a description of the service and the terms and conditions under which it will be offered. If the commission, either on its own motion or in response to the objection of an interested person, finds that the offering may not meet the requirements of this title or of commission rules, it may, after hearing, require the provider to submit a proposed tariff for the service. If the commission has not acted at the end of 14 days, the provider may proceed to offer the service.

(2) A new service may be offered on a detariffed basis, and must be priced above relevant costs. A price list containing the price of the new service must be filed with the commission at the time the service is offered to the public. The commission may require the filing of supporting cost information.

(3) A provider of regulated telecommunications service may withdraw a service upon 30 days' notice to the commission and to the users of the service. The commission may, however, suspend the withdrawal of the service, either on its own motion or at the request of an interested person, and shall then proceed to hearing. The withdrawal must be permitted if the commission finds that the service is not required by public convenience and necessity.

Section 6. Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) ~~It shall be unlawful for any~~ A public utility ~~to~~ may not:

(a) charge, demand, collect, or receive a greater or less compensation for ~~any~~ a utility service performed by it within the state or for any service in connection ~~therewith~~ with a utility service than is specified in ~~such~~ the printed schedules, including schedules of joint rates, ~~as~~ that may at the time be in force;

(b) demand, collect, or receive ~~any~~ a rate, toll, or charge not specified in ~~such~~ the schedules; or

(c) grant ~~any~~ a rebate, concession, or special privilege to ~~any~~ a consumer or user, ~~which~~ that, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named ~~therein shall~~ be in the printed schedules are the lawful rates, tolls, and charges until the ~~same~~ rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may ~~in its discretion~~ order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the

sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under [section 2]. Additionally, a provider of regulated telecommunications service may offer either rebates or reductions or waivers of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. The commission has jurisdiction to consider whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. The commission may define the appropriate scope of promotions, rebates, and market trials, either by rule or in response to complaints.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8. Codification instruction.** [Sections 2 and 5] are intended to be codified as an

integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 2 and 5].

NEW SECTION. **Section 9.** **Effective date.** [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 11, 1991, at 9:12 a.m.

ROLL CALL

Members Present:
Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Nelson

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 610
ALTERNATIVE REGULATION OF TELEPHONE LOCAL EXCHANGE COMPANIES

Presentation and Opening Statement by Sponsor:

REP. BRADLEY, HOUSE DISTRICT 79, stated this bill would offer an alternative regulation of telephone local exchange companies. It is not a mandatory provision, but is largely enabling. It offers options to the companies and PSC if they so choose. Forbearance is where competition arises for a big company, a regulated provider would be able to request permission to respond to that

competition. What we are trying to do is incentive regulation. The overall goal is to provide incentives in regulation and allow them to encourage companies to become leaner more efficient, keep their prices down, get the most modern in technology. Years ago we used competition as an incentive, now we are allowing regulation to become an incentive to accomplish the same goals.

Proponents' Testimony:

REP. QUILICI, HOUSE DISTRICT 71, Chairman Consumer Counsel, stated there will be some amendments offered to the committee. With those amendments I support this measure. It is about time that we got the telecommunications industry out of the dark ages. With this measure we can move Montana forward in the telecommunications industry and I hope that you will support this measure.

James B. Hayhurst, U S West Communications, gave written testimony in favor of HB 610. **EXHIBIT 1**

Dennis Lopach, Attorney - U S West Communications, stated he will take the committee through some amendments that were negotiated after the bill was introduced. **EXHIBIT 2 & 3.** U S West met with representatives of the Public Service Commission, Montana Consumer Council, MCI, Telecommunications Resources Inc., and we all worked together to come to an agreement on the amendments.

Clark N. Spranget, Business Manager/Financial Secretary, Local 206 - Internal Brotherhood of Electrical Workers, gave written testimony in favor of HB 610. **EXHIBIT 4**

Howard Ellis, Chairman of the Montana Public Service Commission, gave written testimony in favor of HB 610. **EXHIBIT 5**

Bob Nelson, Montana Consumer Counsel, stated this bill does not express a preference for any particular form of alternative regulation or alternative regulation in general. It gives the commission the authority to consider those kinds of proposals. We do support the concept of giving the commission the authority to consider those proposals they find appropriate. Our support for this bill is contingent on accomplishing that permission authority be in a fair and equitable manner. That is the law we were working on in regard to several of the amendments. Some of the highlights of the amendments are important in that they place some limitations on de-tariffing non-competitive services. This bill does not represent the most desirable form of the bill from any single party's perspective but it does represent, with the amendments, an acceptable compromise.

Rex Manual, self, gave written testimony in favor of HB 610. **EXHIBIT 6**

Gail Garey, MCI, stated we support this bill as amended. We

strongly support the amendments and think they provide the necessary safe guards necessary to consumers and the companies.

Cathy Brightwell, AT&T, stated they recognize the need for a authority transmission for a regulated telecommunications system. House Bill 610 provides further incentives to that end. We believe, this bill, as amended, will serve to enhance competitive growth and technological advances in Montana.

Patrick Hogan, Telecommunication Resources Inc., stated this bill as amended verifies Montana Telecommunication Act. It gives the public service commission the authority to put alternatives to standard forms.

Gene Phillips, Northwestern Telephone Systems, stated we support this bill. We like the option aspect and flexibility it provides. We appreciate this bill and its affects.

Opponents' Testimony:

John Driscoll, Public Service Commissioner, stated he is against this bill because it gives so much power to the Public Service Commissioners. He asked the committee to ask themselves how would it be possible for a regulator under any scenario to determine that the regulated utilities is making too much money if they are not able to compute the rate of return on the investment. If the voters knew this bill was to deregulate the telephone companies, I feel that would be against it.

Questions From Committee Members:

REP. GOULD asked **Mr. Hayhurst,** in regards to the local area, the senior citizen or handicapped person homebound with the only reach to the outside world is the telephone. Will there be an option for that person to have monthly flat rate charge from local calls the way they do now after the 5 year period is up? **Mr. Hayhurst** said in the filing before the commission that describes our plan US West proposed to freeze local rates, the ones we just talked about, which would include both the flat rate local calling as well as the major rates. Both of those will be frozen for the 5 years of the plan. We project the rates to be lower after the 5 years unless setbacks occur that are not foreseen.

REP. BROWN asked **Consumer Counsel Staff** If the consumer council has this kind of veto authority any place else right now? **Robert Nelson,** said not that he was aware of.

REP. BROWN asked **Mr. Driscoll** if he was saying don't give the commission anymore power and responsibility because we don't need it and don't want it? **Mr. Driscoll** said it is in the consumers best interest not to give us the added authority they should keep a bit of a leash on us. There is a lot of pressure with commissioners against commissioners.

REP. JOHNSON asked Mr. Ellis what was the vote on the commission to have you support this legislation? Mr. Ellis said it was 2 to three.

REP. JOHNSON asked Mr. Nelson what other things he would like to see in the bill. Mr. Nelson stated they were satisfied with the bill as it is after many long hours of compromise to come up with the amendments given to the committee.

Closing by Sponsor:none

HEARING ON HB 464
ELECTION OF CITY & MUNICIPAL JUDGES AT STATE GENERAL ELECTION

Presentation and Opening Statement by Sponsor:

REP. CROMLEY, HOUSE DISTRICT 94, stated this bill makes all superior court judges election the same year. I suggest that the original support of this bill might move to quickly table.

Proponents' Testimony:none

Opponents' Testimony:

Mike Stevens, Montana Clerk and Recorders Association, stated we are opposed to this bill. There are several features that certainly make poor systems out of 50% of the counties. I suggest you table this bill also.

Shelly Laine, City of Helena, we oppose HB 464.

Questions From Committee Members:none

Closing by Sponsor:none

EXECUTIVE ACTION ON HB 464

Motion: REP. BROWN MOVED HB 464 BE TABLED. Motion carried unanimously.

HEARING ON HB 467
PROVIDE CRIMINAL PENALTY FOR CARRYING GUNS OR DRUGS ON TRAINS

Presentation and Opening Statement by Sponsor:

REP. LEE, HOUSE DISTRICT 49, stated this bill specifies with the code, certain problems that BN is having on their northern route dealing with people getting on the train often carrying firearms and the transport of narcotics. EXHIBIT 7

Proponents' Testimony:

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-11-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON			
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 1
DATE 2-11-91
HB 610

Testimony in Support of HB 610

Good Morning. My name is Rex Manuel. Although I am lobbying this legislative session I am appearing this morning not on behalf of my principal but as an individual. I am appearing here today to support Rep. Bradley's bill and to support the amendments that Rep. Bradley has offered. These amendments are the result of long hard negotiations between all the players in the telecommunications industry, the Montana Consumer Counsel and the Public Service Commission.

During 1990 I had the opportunity to serve for six months as a Commissioner on the Public Service Commission. Although I certainly don't consider myself an expert in ratemaking or telecommunications I think I can offer this Committee some insight on how the Commission works and why this bill is needed.

There is a great debate going on in this country on the proper way to regulate telephone companies in the new telephone business environment where the old monopoly is crumbling. I support this bill because it gives the Commission the authority to look at different ways of regulating companies like US West but does not mandate any change. Changes of this magnitude require a great deal of study and the appropriate place to do this is at the PSC where the burden of proof will be on the telephone company and consumers and competitors will have an opportunity to present their views.

My experience as a regulator convinces me that the process and the personalities at the Commission will insure that no alternative regulatory program will be implemented unless the Commission is fully convinced that the public interest is furthered by making a change.

While I was at the Commission US West proposed an alternative plan for regulation that included plant modernization and a 5 year freeze of basic exchange rates. It was the Commissions opinion that without statutory changes that they would not have the legal authority to adopt the plan even if they wanted to do it.

Rep. Bradley's bill is permissive legislation that would allow the PSC to adopt this plan or a similar one. With the proposed amendments there are added statutory safeguards for consumers and the industry as a whole. I urge passage of HB 610.

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EXHIBIT 2
DATE 2-11-91
HB 610

Testimony of:

James B. Hayhurst, U S WEST Communications

In support of House Bill 610

Before the House Judiciary Committee

February 11, 1991

Mr. Chairman and members of the Committee, my name is Jim Hayhurst and I am Director of External Affairs for U S WEST Communications for Montana. I live in Helena. I am appearing today on behalf of U S WEST in support of HB 610.

I will provide a copy of my testimony, a glossary that may be useful in defining certain terms and concepts we'll discuss this morning and a couple of newspaper clippings about our plan.

As Representative Bradley has stated, the Montana Telecommunications Act of 1985 was the first step to enable telecommunications providers, and in turn, our customers, to take advantage of the increasingly rapid changes occurring in our industry, particularly since the divestiture of AT&T in 1984.

Now six years later even more changes and developments have occurred, and the bill before you attempts to provide the flexibility necessary to address the evolving nature of our industry. Similar provisions have been adopted in 30 states and several more are considering these kinds of changes.

Section 2 (pages 2-4) covers the key focus of this bill -- Alternative Forms of Regulation. What this means simply is the ability of the Public Service Commission to consider alternatives to traditional rate of return regulation, which was developed early in this century for firms operating in the utility industries.

Under traditional rate of return regulation, U S WEST is entitled to recover its costs and to earn a just and reasonable return or profit on its investment in Montana. The primary vehicle for this process is the rate case. This regulatory method is time consuming, fails to promote operational efficiency and simply was not designed to address the rapid changes occurring in the industry - particularly new and competitive services. A very real result is that useful services are not available to customers as quickly as they might be.

The need for legislation similar to HB 610 became very apparent last year when we proposed a Montana Network Improvement and Rate Stability Plan with the Public Service Commission. This proposal, which seeks an Alternative Form of Regulation, included the following provisions:

Rates for basic residence and business exchange services would be frozen for five years.

An earnings range is established. If U S WEST earns above the authorized range, Montana customers and the company would share earnings equally. To determine sharing, an annual financial review process will replace costly and contentious rate cases. With Basic Service rates frozen, improved earnings would come from reduced costs, new services and better marketing of existing services.

With approval of this plan, U S WEST will invest more than $90 million over the next five years to upgrade older switching offices in 113 smaller towns to new digital technology.

The program would upgrade long distance lines in the state to digital facilities, including fiber optics. This project would ensure that by 1995 all Montana residents would benefit from the availability of a modern telecommunications infrastructure, an infrastructure that is necessary to both business operations and consumer activities.

The plan before the Commission will protect basic service customers through the five-year price freeze. It can help deliver new and useful products through the Network Improvement program and the improved flexibility to introduce and market services. And it ensures -- through the profit sharing provisions -- that if the company can increase efficiency and market more effectively, customers will benefit directly from that improved performance.

The PSC legal staff has, however, questioned whether existing statutes empower the Commission to approve such a plan. This bill will remove all doubts.

Section 1 (page 2) simply expands the purpose clause of the 1985 Act to remove any question that the PSC can approve alternate regulation for providers of regulated services.

Section 2 (pages 2-4) is a new section spelling out the PSC's powers regarding alternative regulation, and the procedures by which these plans are to be considered.

Alternatives may include some form of price caps, or the sharing of revenues or profits between customers and the company.

The PSC has nine months to consider a petition by a provider. It can approve the original or a modified plan if it meets certain standards, including a finding that fair, just and reasonable rates will result.

Section 3 (page 4) is amended to allow for more flexible pricing of some regulated services. Under the 1985 Act, detariffing -- or flexible pricing -- could be approved only after a service-by-service demonstration that competition exists. This demonstration can be complicated and it can lead to considerable debate about how much competition exists and how much is enough to satisfy the language of the 1985 Act.

The amendment will allow the PSC to detariff services if it finds this action consistent with the Act's purposes and the public interest. All detariffed prices must be above relevant costs. Rates could be changed with routine notice to the Commission. Services that would be considered for detariffing will be competitive, discretionary or ancillary to primary telephone use. The Commission retains complaint oversight for these services.

Subsection 5 of this section (page 6) adds language that independent companies wanted with regard to de-averaging of toll rates. This language requires long distance providers to charge the same rates for the same distance call, regardless of where the call originates. In other words, a 90-mile call from Great Falls to Helena would cost the same as a 90-mile call from Wyola to Forsyth.

Amendments to Section 4 (pages 8-9) address the "forbearance" provision of the 1985 Act.

Forbearance is a customer-by-customer approach to detariffing. If a regulated company finds that one of its customers is considering a switch to another carrier, it can ask the PSC to permit the offering of a non-tariff price in an effort to compete for the customer's continued business. The forebearance procedure has been used most frequently with large toll customers, that is, large businesses that make many long distance calls.

The amendment says that if a regulated provider shows that a customer has asked for prices from firms that have tariffs or price lists for similar services on file with the PSC, the Commission may treat the situation as competitive and permit the applicant to offer a detariffed price.

Section 5 (pages 9-10) is a new section dealing with new services and withdrawal of services. A provider will give appropriate notice of its intent to offer a service. The Commission may then consider whether it agrees that the service meets all the requirements. It may act to require a hearing, or choose to do nothing, giving the provider the green light to begin offering the service. New services can be offered on a detariffed basis, and must be priced above relevant costs.

For the first time, procedures are written into the law for the withdrawal of services. Thirty days notice is given to the PSC that a service will be terminated, and the Commission has the option of requiring a hearing.

In Section 6 (pages 11-12), the "filed rate statute" which requires that utilities charge the rates on file with the PSC, is amended.

The new provision expressly permits rebates in conjunction with revenue or profit sharing plans. Additionally, providers are permitted to offer, for a limited period, rebates in conjunction with promotions and market trials. The PSC is permitted to consider complaints and to formulate rules to define the scope of promotional campaigns.

The bill before you is a result of an intense negotiating effort by U S WEST Communications and parties who have an interest in telecommunications. A great deal of work has occurred in the last couple months to involve interested parties and to incorporate their ideas into this bill. That work has continued even beyond the introduction of the bill and our attorney, Dennis Lopach, will take you through some amendments that we ask you to consider favorably.

I will not suggest that this bill precisely satisfies the interests of everyone involved. But all our efforts have been done in good faith and good compromise. The result, we believe, is an excellent bill which will clarify the Public Service Commission's authority to deal with the rapidly changing telecommunications industry.

This is a permissive bill. But it allows the Commission to adopt regulatory changes that can benefit Montanans through the 90s and beyond. We ask for your support.

Exhibit # 2
2/11/91 HB 610

Jim Hayhurst
U S WEST Communications
House Judiciary, 2-11-91
HB 610

HOUSE BILL 610 - GLOSSARY

Carrier Access Services:
Carrier Access is provided by a Local Exchange Company when it provides for long-distance companies to reach local customers through its local telecommunications network. Basically, switched access provides a transmission path between a customer and a long-distance company so the customer can initiate a long-distance call or a long-distance company can complete a call to the customer.

Deaverage:
This is a pricing structure for long-distance services in which the price of a call which travels the same distance is priced differently because of such variables as the availability of other services and the cost. For example, calls placed over high-volume, low-cost routes could be priced less than calls placed over low-volume, high-cost routes.

Detariff:
A regulatory action which permits a specific service to be offered at prices which are not specified in a rate schedule (tariff) filed with and approved by the Public Service Commission. The prices charged to customers for these detariffed services are on file with the PSC as "price lists." The service remains under the jurisdiction of the PSC and the revenue received are included in the PSC's review of the provider's earnings.

Forbearance of Regulation:
A procedure by which a provider of a regulated service may request permission to respond to a competitive situation with a price other than the tariffed rate.

Message Telecommunications Service:
The industry term for long-distance service.

Tariff:
A schedule of specific rates to be charged by a regulated provider for a particular service. All regulated telecommunications services are offered to the public at tariffed rates and any changes must be approved by the PSC.

Universal Service:
A long standing public policy and service goal of both the telephone industry and regulatory agencies to make basic telephone service available to the greatest number of people possible at affordable prices.

NEWS MEDIA REPORT

Exhibit # 2
o 2/11/91 HB 610

☒ NEWSPAPER ☐ TV
☐ RADIO ☐ OTHER

☐ MGR. ☐ NEWS

CITY: Great Falls
NAME OF NEWSPAPER, RADIO/TV STATION OR OTHER MEDIA: Great Falls Tribune
DISTRICT:
PAGE OR TIME: page 3-C
DATE APPEARED: June 14, 1990
STATE: Montana

☐ POSITIVE
☐ NEUTRAL
☐ NEGATIVE

CO. POSITION INCLUDED? YES____ NO____

STORY THEME
(Check Only One)

☐ CONSUMER ☐ MARKETING ☐ SERVICE
☐ TECHNOLOGY ☐ LEGISLATION ☐ RATES
☐ OTHER_____
(I.E. FINANCIAL, LABOR, PERSONNEL, CITIZENSHIP, ETC.)

Phone firm files for 5-year rate freeze

HELENA (AP) — U S West Communications Wednesday filed a request with the state Public Service Commission to freeze basic service rates for five years and to spend nearly $80 million on new digital switching offices and long-distance facilities in 112 of Montana's smaller communities.

What Montana Vice President George Ruff called a "new regulatory approach" would give the utility an 11 percent to 12.5 percent rate of return. If the company earned more than 12.5 percent, profits would be shared 50-50 with customers.

Ruff said in the PSC filing that the plan, which could begin in 1991, "includes a rate freeze for residence and business access services such as basic local service.

"We believe the ability to keep rates stable and to offer new and useful services will be of real benefit to our customers," he said.

The earnings range would be reviewed in 1993, and the company could file for higher rates if earnings fell below the range for a year.

Ruff said the plan included three limited exceptions to the freeze. But he added that the company does not expect "frozen" rates to change through most of the plan's five-year life.

He said that "if we manage our business effectively, the plan allows us to earn more than we might have under traditional regulation."

Exceptions to the rate increase, with PSC approval, would be PSC-approved depreciation changes, accounting changes for benefits paid to U S West retirees and other PSC actions that would affect the company financially.

Now that U S West has upgraded equipment in the state's larger cities, "we believe we have a plan that will allow us to finance the investment needed to bring this digital technology — and the service it provides — to customers in the rest of the state," Ruff said.

The largest community to get upgraded facilities would be Havre, and the smallest would have about 100 customers, said U S West spokesman Russ Cravens.

"A myriad of options in telecommunications are not available to the smaller communities, such as call forwarding and three-way calls," Cravens said.

If the plan is approved by the PSC, the company would begin a five-year construction program to install 112 state-of-the-art digital switching offices in the smaller communities, the filing said. In addition, the company would complete a totally digital long-distance network to improve service to all Montana communities.

"We're excited about the potential to upgrade our customers' service through this accelerated improvement plan," Ruff said. "Government leaders, economic development officials and customers are increasingly convinced that a modern telecommunications network is important to business growth and new jobs in Montana."

Ruff said that regulatory commissions around the country are implementing similar regulatory approaches. He said more than half the states and the Federal Communications Commission have adopted new forms of regulation.

Cravens was asked if, after five years, the company would file for a big rate increase because the construction program would have increased the basis for its rate base.

Cravens said that, because of depreciation of older equipment, "I don't see that we're looking at any balloon rate hike at the end of five years."

REMARKS:

NEWS MEDIA REPORT

Exhibit # 2
OR 2/11/91 HB 610

☑ NEWSPAPER ☐ TV
☐ RADIO ☐ OTHER

☐ MGR. ☐ NEWS

CITY: Butte	NAME OF NEWSPAPER, RADIO/TV STATION OR OTHER MEDIA: The Montana Standard
DISTRICT:	PAGE OR TIME: p8 7
	DATE APPEARED: Dec 5
STATE: Montana	

☐ POSITIVE
☐ NEUTRAL
☐ NEGATIVE

CO. POSITION INCLUDED? YES___ NO___

STORY THEME
(Check Only One)

☐ CONSUMER ☐ MARKETING ☐ SERVICE
☐ TECHNOLOGY ☐ LEGISLATION ☐ RATES
☐ OTHER_____
(I.E. FINANCIAL, LABOR, PERSONNEL, CITIZENSHIP, ETC.)

US West seeks rural improvements, rate freeze

By Kevin McRae
Standard State Bureau

HELENA — US West Communications intends to ask the 1991 Legislature to change state law to allow the company to boost profits and improve rural phone services, while freezing basic service rates for five years.

The company's proposal has not yet been approved by the state Public Service Commission, which is considering whether state utility regulators have legal authority to approve US West's requests.

Regardless of the PSC's actions, the company is drafting a bill proposing to change regulation laws in a way that would increase profits and allow $80 million worth of phone improvements during the basic rate-freeze period, US West spokesman Russ Cravens said Tuesday.

Meanwhile, a PSC attorney told commissioners in a meeting Tuesday that he doubted US West's entire request could be granted under current laws the commission must follow.

Despite their apparent disagreement, Cravens and PSC attorney Chuck Evilsizer said in separate interviews that they hope US West and the state agency can cooperate to reach a settlement soon.

US West filed its original request in June, proposing to freeze basic phone service rates for five years and to spend about $80 million on new digital switching offices and long-distance equipment in 112 of Montana's smaller towns.

The request also proposed a new regulatory system that would give the company an allowable rate of return ranging from 11 percent to 12.5 percent. Under the earning-sharing plan, if US West earned more than 12.5 percent, the profits would be shared 50-50 with customers.

US West intends to file a second request later this month, which will resemble the June proposal but will include more cost studies and financial information, Cravens said.

Evilsizer questioned the PSC's legal authority to grant the request, citing laws against "retroactive rate making" and "pre-approval" among his reasons.

State laws for setting rates prohibit backward adjustments such as the profit-sharing plan proposed by US West, Evilsizer said.

Rates are required to be set in advance without variations, he said, adding that a recent Illinois court decision struck down a similar plan by a telephone company in that state.

The plan to finance the $80 million in improvements also could violate laws against pre-approval, requiring that utility improvements be in place and operating before a company can recover the costs in its rates, Evilsizer said.

Cravens said US West did not ask for pre-approval, rather, "We're saying that this proposal would give us the opportunity to fiance these improvements and provide rate stability."

Cravens said several states are adopting alternative regulation methods to keep up with changes in technology and the economy.

Traditional regulation methods, in which government regulators determine a company's allowable profit, were devised to help manage consumer interests when monopolies dominated business, he said. A new system is needed because of new technology and increasing business competition that has emerged within the past 10 years, Cravens said.

REMARKS:

EXHIBIT 3
DATE 2-11-91
HB 610

House Bill No. 610
Introduced Copy

1. Page 3, line 23.
Following: "interest;"
Strike: "and"
Insert: "(f) will enhance economic development in the state;
(g) will result in the improvement of the telephone infrastructure in the state; and"
Renumber: subsequent subsection

2. Page 4, line 9.
Following: "regulation"
Strike: "."
Insert: "; or the Consumer Counsel may object to the proposed order."

3. Page 4, line 10.
Following: "withdrawn,"
Insert: "or the Consumer Counsel objects to the proposed order,"

4. Page 5, lines 15 and 16.
Strike: lines 15 and 16 in their entirety
Renumber: subsequent subsections

5. Page 5, line 21.
Following: "part."
Insert: "For all services detariffed under this subsection, the provider must maintain a current price list on file with the commission and must provide notice of changes to the price list as prescribed by the commission."

6. Page 6, line 17.
Following: (2)
Insert" (c)

7. Page 6, line 18.
Following: "to"
Strike: "the"
Insert: "any"

8. Page 6, line 20.
Following: "interest."
Insert: "Non-competitive local exchange access to end-users and"
Strike: "Carrier"
Insert: "carrier"

9. Page 7, line 3.
Following: "other discounts"
Insert: "or discounts in promotional offerings"

10. Page 7, line 4.
Following: "manner"
Insert: "."
Strike: remainder of lines 4 through 5 in their entirety

11. Page 7, lines 13 through 16.
Strike: subsection (7) in its entirety

12. Page 8, line 25.
Following: "customer"
Insert: "or potential customer"

13. Page 9, line 4.
Following: "the commission"
Strike: "shall"
Insert: "may"

14. Page 9, line 11.
Following: "tariffs"
Insert: "or price lists"
Following: "file"
Strike: "and approved by"
Insert: "with"

15. Page 9, line 17.
Following: "Thereafter,"
Insert: "for the term of the contract,"

16. Page 9, line 20.
Following: "tariffs"
Insert: "or price lists"
Following: "file"
Strike: "and approved by"
Insert: "with"

17. Page 9, line 25.
Following: "provide"
Strike: "the commission with"
Following: "notice"
Insert: ", in the form prescribed by the commission,"

18. Page 10, lines 1 through 3.
Following: "customers"
Insert: "."
Strike: the remainder of lines 2 and 3 through "provide" on page 10, line 3.
Insert: "The notice shall include"
Following: "service"
Insert: ", a minimum price,"

19. Page 10, lines 4 through 9.
Following: "offered."
Strike: the remainder of line 4 through "service" on page 10, line line 9
Insert: "At the end of a 10 day comment period for interested parties, the commission may immediately approve, suspend, or disapprove the new service offering. The commission may, in the alternative, allow the interim introduction of the service pending a hearing, at a later date."

20. Page 10, line 10.
Following: "of"
Strike: "14"
Insert: "30"
Following: "days"
Insert: ", following issuance of notice,"

21. Page 10, lines 12 and 13.
Following: "basis"
Insert: "."
Strike: "and must be priced above relevant costs."

22. Page 10, lines 16 and 17.
Following: "public"
Strike: the remainder of lines 16 and 17

23. Page 10, line 18.
Following: line 17
Insert: "For purposes of this section, "new service" means any service introduced separately or in combination with other services which is not functionally required to provide local exchange service or which is not a repackaged current service or a direct replacement for a regulated telecommunications service."
Renumber: subsequent subsection

24. Page 10, lines 23 through 25.
Following: "hearing."
Strike: the remainder of lines 23 through 25

25. Page 12, line 4.
Following: "offer"
Insert: ", for a limited period of time,"

26. Page 12, lines 7 through 10.
Following: "practices."
Strike: the remainder of line 7 through "cost-effective." on page 12, line 10.
Insert: "Promotional pricing of services that remain fully tariffed requires advance approval of the commission. No promotional offering will combine monopoly services with competitive services."

27. Page 12, line 12.
Following: "complaints."
Insert: "The commission may determine whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities which the commission determines are unfairly discriminatory or not cost-effective shall be the responsibility of the provider's shareholders in rates set by the commission."

28. Page 12, line 17.
Following: "contracts."
Insert: "NEW SECTION. Section 7. Costs and complaint jurisdiction. (1) Prices charged for any regulated telecommunications service shall be above relevant costs unless ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components which are used by the telecommunications provider and which would be essential for alternative providers to utilize in the provisioning of such competitive services, pursuant to commission-approved methodology."

(3) The commission has jurisdiction to consider complaints and to initiate investigations to detrmine whether the price charged by a provider of regulated telecommunications service is above relevant cost. Additionally, the commission may consider complaints that any pricing or promotional practice violates any provision of this title."

NEW SECTION. Section 8. Rule-Making Authority. The commission may adopt rules to implement this act."

Renumber: subsequent sections

29. Page 12, line 25.
Following: "2"
Strike: "and"
Insert: ","
Following: 5
Insert: "and 7"

Exhibit # 3
2/11/91 HB 610

30. Page 13, line 24.
Following: "2"
Strike: "and"
Insert: ","
Following: "5"
Insert: "and 7"

Exhibit # 3
2/11/91 HB 610

House Bill No. 610

Introduced Copy

8A. Page 6, lines 21 and 22.
Following: "detariffed."
Strike: the remainder of line 21 and line 22

EXHIBIT 4
DATE 2-11-91
HB 610

52nd Legislature LC 0576/01

STATEMENT OF INTENT

House Bill No. 610

A statement of intent is required for this bill because the Public Service Commission is granted rulemaking authority in Section 6 to "define the appropriate scope of promotions, rebates, and market trials." The legislature intends that the Commission adopt rules that permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services.

LOCAL 206 IBEW
Clark N. Spranget
Business Manager

406/443-7475
1-800-621-3437

P.O. Box 5654
Helena, Montana 59604

EXHIBIT 5
DATE 2-11-91
HB 610

Feb 09, 1991

Representative William Strizich
Chairman, Judiciary Committee
House of Representatives

Representative Jim Rice
Member, Judiciary Committee
House of Representatives

Dear Sirs:

It is not possible for me to appear at the scheduled hearing of HB 610, Monday, February 11, 1991, as I must be in Missoula because of a medical problem in my family.

I had planned to attend this hearing in support of HB 610.

I am currently Business Manager/Financial Secretary, Local 206 of the International Brotherhood of Electrical Workers (IBEW). Just this past summer members of Local 206 and myself worked very hard with local city, county and state officials, as well as our Federal delegation and management to retain or expand the Network Operations Center here in Helena. We were successful in that endeavor.

Today this center employs 43 people and is forecast to grow to 81 employees in the future. The center monitors the workings of the telephone network in Montana, Wyoming and soon to add Utah. As you might guess, this center could be located anywhere. While we think our Montana membership can do the work better than workers in any other state, there are only so many jobs to go around. Also, the center is designed to monitor the operations of modern digital switching offices and facilities that the US WEST Communications' modernization plan calls for. So, I worry about keeping a high tech center in Montana if we don't go forward with building the high tech telephone network that I hear Montanans say they want.

In closing, I strongly support HB 610. I feel the legislature should provide the Public Service Commission with clear authority to consider and approve a modernization plan for the betterment of all Montanans.

I thank you for your support and I ask that my comments be entered into the record.

Respectfully submitted,

Clark N. Spranget

Clark N. Spranget

EXHIBIT 6
DATE 2-11-91
HB 610

PUBLIC SERVICE COMMISSION TESTIMONY
IN FAVOR OF HB 610
February 11, 1991

I am Howard Ellis, Chairman of the Montana Public Service Commission. I am appearing here today to speak on behalf of the Commission in favor of HB 610 with the amendments offered by Representative Bradley.

This Bill is important for a number of reasons. First, there is some uncertainty as to the PSC's power to approve alternative forms of regulation for telephone companies under current law. This Bill will empower the PSC to approve price caps, earnings-sharing plans and other alternative types of regulation which have already been implemented in many other states. These plans can increase the efficiency incentives of telephone companies, reduce regulatory costs, increase technological innovation, increase economic efficiency, result in sharing of earnings with ratepayers and modernization of the telecommunications infrastructure, and increase economic development in the state.

This Bill (Sec. 3) also increases the flexibility of the Commission to detariff telecommunications services (pricing flexibility and reduced regulatory oversight), when found to be consistent with the public interest and the state public policies established in the 1985 Montana Telecommunications Act (universal service, encouragement of competition, increased access to telecommunications technological advancements and transition to a competitive environment).

Section 4 will clarify the Commission's power to allow a telephone company to sign individualized customer contracts (forbearance) whenever another provider has tariffs or price lists for similar service on file with the Commission.

Section 5 will expedite the introduction and withdrawal of telecommunications services, while Section 6 will permit rebates and waivers of installation charges, as well as promotions and market trials. These changes will streamline the administrative process, reduce regulatory burden, and foster an innovative responsive, and dynamic telecommunications marketplace.

The Bill also contains a number of safeguards and protections for small telephone companies, interexchange carriers and consumers.

The Commission's support for the Bill is expressly contingent on the adoption of the amendment which would ensure that, along with the telephone company proposing a plan of alternative regulation, the Montana Consumer Counsel would have the right to object to a Commission order and revert the company to traditional regulation.

The Commission wrestled long and hard with the problem, perceived by some, of improper delegation of Commission authority to a regulated company. The proposed amendment would mitigate that problem by giving the state's constitutionally-designated consumer representative equal authority.

The Commission today expresses its support in principle to the Bill. An important theme of the Bill is its retention of Commission discretion in the field of telecommunications regula-

tion. The Commission supports this Bill with the express understanding that it is "permissive" legislation.

However, it should be noted that the Commission and its staff has not had the opportunity to fully analyze the latest amendments offered today by Representative Bradley. The Commission's support is also contingent upon the agreement and support of the other carriers and industry representatives. The Commission is willing to provide this Committee with any assistance it may require to analyze this Bill.

In summary, in this Bill lies the hope of greater economic efficiency, innovation and competition in the telecommunications industry as well as improved quality of service, a much broader menu of service options and economic development for all Montanans. The Commission urges your support. Thank you.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 12, 1991, at 7:40 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Boharski (R)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 610

Motion: **REP. BROWN MOVED HB 610 DO PASS.**

Motion: **REP. BROWN** moved to amend HB 610.

Discussion: **REP. BROWN** stated he moves the amendments to this bill with some trepidation. I don't like the consumer council

having the veto power. I believe the utilities also has a topped out provision. Meaning, if they get into the business or the rate case and see what the commission wants them to do, and they want to back out they can back out. PSC had some concerns about that and the use of the consumer counsel to mitigate the difference between those two uses.

REP. MEASURE stated he agrees that technology is changing and we have to be adaptable. This is a substantial step we are taking with this legislation and the committee seems to be taking it lightly. We do not spend enough time on research on such important bills as this.

REP. BROWN stated that bills like this we do not have the staff or the time to spend an overabundance of research. We depend on the industry to inform us of the substance of the bill.

Vote: Motion to amend HB 610 carried unanimously.

Motion/Vote: **REP. BROWN MOVED HB 610 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 467

Motion: **REP. MESSMORE MOVED HB 467 DO PASS.**

Motion/Vote: **REP. LEE** moved to amend HB 467. **EXHIBIT** Motion carried unanimously.

Discussion: **REP. RICE** asked **Mr. MacMaster** if these offenses are not covered by current law? **Mr. MacMaster** said the carrying of the weapons is covered by current Montana Law only to the extent that you are carrying a concealed weapon. This law would apply to it somewhat. There is some kind of federal statute that makes it illegal to carry a weapon on the train. There is already numerous possession of dangerous drugs and selling of dangerous drugs that would cover that.

Motion/Vote: **REP. WHALEN MOVED HB 467 BE TABLED.** Motion failed.

Discussion: **REP. BROWN** stated he does not see the need for this bill. All of the things that are required to be enforced are enforceable. I am voting against this bill.

REP. LEE stated when he was asked to carry the bill his main question was whether or not this bill was needed and they kept reassuring me there was a great need for this bill and that is why I am still in support of this bill.

REP. TOOLE wondered why they didn't include mental states?

John MacMaster said there is a section in the criminal code that says for every criminal offense you have to have the mental state

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-12-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		✓
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		✓
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

2305
2-13-91
TDB

HOUSE STANDING COMMITTEE REPORT

February 13, 1991
Page 1 of 6

Mr. Speaker: We, the committee on Judiciary report that House Bill 610 (first reading copy -- white) do pass as amended .

Signed: Bill Strizich
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 5.
Insert:
"STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 8] grants the public service commission general rulemaking authority and [section 6] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

2. Page 3, line 22.
Following: "interest;"
Strike: "and"
Insert:
"(f) will enhance economic development in the state;
(g) will result in the improvement of the telephone infrastructure in the state; and"
Renumber: subsequent subsection

3. Page 4, line 9.
Following: "regulation"
Insert: "or the consumer counsel may object to the proposed order"

4. Page 4, line 10.
Following: "withdrawn"
Insert: "or the consumer counsel objects to the proposed order"
Strike: ";"
Insert: ":"

5. Page 5, line 9.
Following: "state."
Insert: "For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission."

6. Page 5, lines 15 and 16.
Strike: lines 15 and 16 in their entirety
Renumber: subsequent subsections

7. Page 6, line 17.
Following: "(2)"
Insert: "(c)"

8. Page 6, line 18.
Following: "to"
Strike: "the"
Insert: "any"

9. Page 6, line 20.
Following: "interest."
Strike: "Carrier"
Insert: "Noncompetitive local exchange access to end-users and carrier"

10. Page 6, lines 21 and 22.
Strike: "Services" on line 21 through end of line 22

11. Page 7, line 3.
Following: "discounts,"
Insert: "discounts in promotional offerings, or"

12. Page 7, lines 4 and 5.
Following: "manner" on line 4
Strike: remainder of line 4 through "offerings" on line 5

13. Page 7, lines 13 through 16.
Strike: subsection (7) in its entirety

14. Page 8, line 25.
Following: "customer"
Insert: "or potential customer"

15. Page 9, line 4.
Following: "the commission"
Strike: "shall"
Insert: "may"

16. Page 9, line 11.
Following: "tariffs"
Insert: "or price lists"
Following: "file"
Strike: "and approved by"
Insert: "with"

17. Page 9, line 17.
Following: "Thereafter,"
Insert: "for the term of the contract,"

18. Page 9, line 20.
Following: "tariffs"
Insert: "or price lists"
Following: "file"
Strike: "and approved by"
Insert: "with"

19. Page 9, line 25.
Following: "provide"
Strike: "the commission with"
Following: "notice"
Insert: ", in the form prescribed by the commission,"

20. Page 10, lines 1 through 3.
Strike: "at least" on line 1 through "provide" on line 3
Insert: ". The notice must include"

21. Page 10, line 3.
Following: "service"
Insert: ", a minimum price,"

22. Page 10, lines 4 through 9.
Strike: "If the" on line 4 through "service." on line 9
Insert: "At the end of a 10-day comment period for interested parties, the commission may immediately approve, suspend, or disapprove the new service offering or it may allow the interim introduction of the service pending a hearing at a later date."

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23. Page 10, line 10.
Following: "of"
Strike: "14"
Insert: "30"
Following: "days"
Insert: "following issuance of notice"

24. Page 10, lines 12 and 13.
Strike: "," on line 12 through "costs" on line 13

25. Page 10, lines 16 and 17.
Following: "public." on line 16
Strike: the remainder of lines 16 and 17

26. Page 10, line 18.
Following: line 17
Insert: "(3) For purposes of this section, "new service" means any service that is introduced separately or in combination with other services and that is not functionally required to provide local exchange service or that is not a repackaged current service or a direct replacement for a regulated telecommunications service."
Renumber: subsequent subsection

27. Page 10, lines 23 through 25.
Following: "hearing." on line 23
Strike: the remainder of lines 23 through 25

28. Page 12, line 4.
Following: "offer"
Insert: ", for a limited period of time,"

29. Page 12, lines 7 through 10.
Following: "practices." on line 7
Strike: the remainder of line 7 through "cost-effective." on line 10.
Insert: "Promotional pricing of services that remain fully tariffed requires advance approval of the commission. No promotional offering may combine monopoly services with competitive services."

30. Page 12, line 12.
Following: "complaints."
Insert: "The commission may determine whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities that the commission determines are

unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission."

31. Page 12, line 18.
Following: line 17
Insert: "NEW SECTION. Section 7. Costs for services provided -- jurisdiction over complaints. (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

(3) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title.

NEW SECTION. Section 8. Rulemaking authority. The commission may adopt rules to implement this part."

Renumber: subsequent sections

32. Page 12, line 25.
Following: line 24
Insert: "(1)"
Following: "2"
Strike: "and"
Insert: ","
Following: 5
Insert: ", and 7"

33. Page 13, line 3.
Following: "2"
Strike: "and"
Insert: ","
Following: "5"
Insert: ", and 7"

34. Page 13, line 4
Following: line 3
Insert: "(2) [Section 8] is intended to be codified as an integral part of Title 69, chapter 3, part 3, and the provisions of Title 69, chapter 3, part 3, apply to [section 8]."

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 11, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 610

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, sponsor of the bill, stated that this is some revisions of a telecommunications bill that the committee dealt with six years ago. At that time we had the Montana telecommunications act, it was coming at a time where the country had gone through eight years building the whole document based on a monopoly kind of concept. One entity was providing a universal service, they were guaranteed all of the business, and the trade off was that it was a very carefully regulated monopoly. Competition began creeping in, and then we entered into a seven year litigation and an anti-trust suit in the late seventies. This began competition in the telecommunications industry. At that time, we came in with a bill, to try to move in this state as organized as possible, from a regulated monopoly to a competitive market. At the same time keep universal service cohesive affordable across the state of Montana. It was a challenge at that time, to try to deal with the fairness issue.

We had an entity, mountain bell had us west, which had the monopoly, and we are trying to come up with a scheme where when competition came in, they would eventually be allowed to compete when the competition reached a certain level. This wouldn't tie their hands so much that the competition could come in and sift off the cream of the business, and leave them with the bad business. At that time they talked about new concepts like detariffing and forbearance. Telecommunications is the fastest of all technology in the country. This is largely enabling and permissive. It gives regulatory choices to the public service commission.

Proponents' Testimony:

Jim Hayhurst, director of external affairs for US west communications for Montana, spoke in favor of the bill (See Exhibit 1).

Rex Manuel, representing himself, stated this bill gives the commission the authority to look at different ways to regulate companies, like US west, but it does not mandate any change. His experience as a regulator convinced him that the process and the personalities that the commission will ensure that no alternative regulatory program will be implemented unless the commission is fully convinced that the public interest is furthered by making a change. This bill is permissive legislation that will allow the PSC to adopt this plan, or a similar one. This bill offers statutory safeguards for the consumers and the industry as a whole.

Leo Berry, representing MCI telecommunications, stated that HB 610 as originally introduced would have caused some major problems for MCI. Since the bill has been substantially amended, MCI stands in strong support.

Cathy Brightwell, executive vice president of government affairs representing AT&T, spoke in favor of the bill (See Exhibit 4).

Gene Philips, representing northwestern telephone systems, stated that they feel that the fact that it is permissive and is not mandatory is a strong issue.

Tom Hopgood, representing GTE, stated that they support this bill for the reasons stated.

Ken Williams, representing entech, stated that they support this bill.

Joan Mandeville, representing Montana telephone association, stated that they worked with US west on this bill, both before its introduction, and through the process. Through that process, all of their problems and concerns with this bill were removed. They support it's passage.

Clark Spranget, the business manager of international brotherhood elect local 206 in Helena, spoke in favor of the bill (See Exhibit 5).

Bob Nelson, representing the consumer council, stated that this bill largely originated due to the sending proposal before the public service commission for alternative regulation. They support the concept of giving the commission the flexibility to

consider the proposal.

Ivan Evilsizer, staff attorney for the Montana public service commission, spoke in favor of the bill (See Exhibit 2).

Opponents' Testimony:

Commissioner John Driscoll, the elected official person designated to regulate utilities here in Montana from southwestern Montana, stated that the commission voted to support this piece of legislation by a three to two vote. The two commissioners that voted against this legislation was himself and commissioner Anderson. It is a very bad piece of legislation. Ask yourselves if you'd support this bill if it was written, instead of alternative regulation, an act to deregulate the basic telephone services in Montana. The only reason to vote in favor of a bill like this, is if you feel very strongly that somehow we need to do more to encourage competition, because competition in turn improves the quality of telecommunication. This bill will not get that accomplished. The commission already has been given by you plenty of authority to do just about anything that this bill asks to be done. This bill is a monopoly asking us to take away all of the protection that the consumer has against monopolies, and to leave the monopoly with some of the few shields that it has to protect itself from being sued for anti-trust.

Questions From Committee Members:

Senator Thayer stated that he was having trouble understanding why commissioner Driscoll is opposing this, because this bill gives the commission the authority to look at this alternative. It does not mandate that you have to do it. In his testimony he stated that essentially they have all of the pieces to do this anyway. This just clarifies that his commission does choose to rule in favor of the alternative form, it takes away the legal question that they have the authority, or they do not.

Commissioner Driscoll stated that it does appear that way, and under any other circumstance he wouldn't have the problem that he is having right now.

Senator Thayer asked that Jim Hayhurst respond to Mr. Driscoll's testimony.

Jim Hayhurst stated that the process was started four or five years ago. Serious discussions began in 1990 where US west proposed a revenue plan similar to the plan that is in affect today in Idaho. Their plan is before the commission, the commission has looked at it substantially. The bill is permissive, it gives the commission authority to approve their plan, but it certainly does not mandate to commission to approve their plan.

Senator Lynch asked that Representative Bradley respond to the statements made by commissioner Driscoll.

Representative Bradley submitted a written response (See Exhibit 3).

Questions From Committee Members:

Senator Thayer asked where was the amendment put on, the committee or the floor.

Representative Hansen stated the amendment was put in on the floor.

Senator Gage asked if anybody had talked with the Montana association of counties in regards to this bill.

Representative Hansen replied that she talked with her county, but not with the association.

Closing by Sponsor:

Representative Hansen closed by saying that she concurs with the amendments that were proposed. Senator Franklin will carry the bill.

HEARING ON HOUSE BILL 819

Presentation and Opening Statement by Sponsor:

Representative Angela Russell, sponsor of the bill, stated that this bill promotes state tribal cooperation in economic development. It provides for an indian representative on the tourism advisory council. The house committee did make some amendments. Tourism is a growth industry in Montana, and it promotes revenue.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage stated that on page four, line twenty two of the bill, it states "and enhancement of economic opportunities FOR TOURISM", he would personally like that taken out of the bill. These cooperative agreements should look at a lot more than just tourism.

Representative Russell stated that was her original intent. The committee thought that it was so broad, and that is why they put the "for tourism" part in it.

Senator Franklin asked if Representative Russell would be open to amending "for tourism" and replacing it with "in areas such as tourism".

Representative Russell replied that she would be open to that.

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/11/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	X		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 3/11/91
BILL NO. HB610

Testimony of:

James B. Hayhurst, U S WEST Communications

In support of House Bill 610

Before the Senate Business and Industry Committee

March 11, 1991

Mr. Chairman and members of the Committee, my name is Jim Hayhurst and I am Director of External Affairs for U S WEST Communications for Montana. I live in Helena. I am appearing today on behalf of U S WEST in support of HB 610.

I will provide a copy of my testimony, a glossary that may be useful in defining certain terms and concepts we'll discuss this morning and a couple of newspaper clippings about our plan.

As Representative Bradley has stated, the Montana Telecommunications Act of 1985 was the first step to enable telecommunications providers, and in turn, our customers, to take advantage of the increasingly rapid changes occurring in our industry, particularly since the divestiture of AT&T in 1984.

Now, six years later, even more changes and developments have occurred, and the bill before you attempts to provide regulators the flexibility necessary to address the evolving nature of our industry. Similar provisions have been adopted in 30 states and several more are considering these kinds of changes.

Section 2 (pages 3-5) covers the key focus of this bill -- Alternative Forms of Regulation. What this means simply is the ability of the Public Service Commission to consider alternatives to traditional rate of return regulation, which was developed early in this century for firms operating in the utility industries.

Under traditional rate of return regulation, U S WEST is entitled to recover its costs and to earn a just and reasonable return or profit on its investment in Montana. The primary vehicle for this process is the rate case. This regulatory method is time consuming, fails to promote operational efficiency and simply was not designed to address the rapid changes occurring in the industry - particularly new and competitive services. A very real result is that useful services are not available to customers as quickly as they might be.

The need for legislation similar to HB 610 became very apparent last year when we proposed a Montana Network Improvement and Rate Stability Plan with the Public Service Commission. This proposal, which seeks an Alternative Form of Regulation, included the following provisions:

Rates for basic residence and business exchange services would be frozen for five years.

An earnings range is established. If U S WEST earns above the authorized range, Montana customers and the company would share earnings equally. To determine sharing, an annual financial review process will replace costly and contentious rate cases. With Basic Service rates frozen, improved earnings would come from reduced costs, new services and better marketing of existing services.

With approval of this plan, U S WEST will invest more than $90 million over the next five years to upgrade older switching offices in 113 smaller towns to new digital technology.

The program would upgrade long distance lines in the state to digital facilities, including fiber optics. This project would ensure that by 1995 all Montana residents would benefit from the availability of a modern telecommunications infrastructure, an infrastructure that is necessary to both business operations and consumer activities.

The plan before the Commission will protect basic service customers through the five-year price freeze. It can help deliver new and useful products through the Network Improvement program and the improved flexibility to introduce and market services. And it ensures -- through the profit sharing provisions -- that if the company can increase efficiency and market more effectively, customers will benefit directly from that improved performance.

The PSC legal staff has, however, questioned whether existing statutes empower the Commission to approve such a plan. This bill will remove all doubts.

The bill before you is a result of an intense negotiating effort by U S WEST Communications and other parties who have an interest in telecommunications. A great deal of work has occurred in the last few months to involve interested parties and to incorporate their ideas into this bill.

That work continued even beyond the introduction of the bill and this bill includes a number of amendments offered jointly by involved parties and adopted in House action on the bill. That action included a unanimous "do-pass" recommendation by the House Judiciary Committee and a 96-4 vote on the House floor.

I won't review every provision of the bill, but I will cover some key points.

Section 1 (pages 2-3) simply expands the purpose clause of the 1985 Act to remove any question that the PSC can approve alternate regulation for providers of regulated services.

Section 2 (pages 3-5) is a new section spelling out the PSC's powers regarding alternative regulation, and the procedures by which these plans are to be considered.

Alternatives may include some form of price caps, or the sharing of revenues or profits between customers and the company.

The PSC has nine months to consider a petition by a provider. It can approve the original or a modified plan if it meets certain standards, including a finding that fair, just and reasonable rates will result. If either the petitioner or the Montana Consumer Counsel object to the new plan, there would be no change in regulation.

Section 3 (pages 5-8) is amended to allow for more flexible pricing of some regulated services. Under the 1985 Act, detariffing -- or flexible pricing -- could be approved only after a service-by-service demonstration that competition exists. This demonstration can be complicated and it can lead to considerable debate about how much competition exists and how much is enough to satisfy the language of the 1985 Act.

The amendment will allow the PSC to detariff services if it finds this action consistent with the Act's purposes and the public interest. Rates could be changed with routine notice to the Commission. Services that would be considered for detariffing will be competitive, discretionary or ancillary to primary telephone use. For any detariffed, non-competitive services, the Commission will establish both maximum and minimum prices. The Commission retains complaint oversight for these services.

Also, Subsection 5 of this section (pages 7-8) adds language that independent companies wanted with regard to averaging of toll rates. This language requires long distance providers to charge the same rates for the same distance call, regardless of where the call originates. In other words, a 90-mile call from Great Falls to Helena would cost the same as a 90-mile call from Wyola to Forsyth.

Amendments to Section 4 (pages 8-10) address the "forbearance" provision of the 1985 Act. Forbearance is a customer-by-customer approach to detariffing. If a regulated company finds that one of its customers is considering a switch to another carrier, it can ask the PSC to permit the offering of a non-tariff price in an effort to compete for the customer's continued business. The forebearance procedure has been used most frequently with large businesses that make many long distance calls.

The amendment says that if a regulated provider shows that a customer has asked for prices from firms that have tariffs or price lists for similar services on file with the PSC, the Commission may treat the situation as competitive and permit the applicant to offer a detariffed price.

Section 5 (pages 11-12) is a new section dealing with new services and withdrawal of services. A provider will give appropriate notice of its intent to offer a service. The Commission, considering certain requirements, may require a hearing, or choose to do nothing, giving the provider the green light to begin offering the service. New services can be offered on a detariffed basis and must be priced above relevant costs.

For the first time, procedures are written into the law for the withdrawal of services. Thirty days notice is given to the PSC that a service will be terminated, and the Commission has the option of requiring a hearing.

In Section 6 (pages 12-14), the "filed rate statute" which requires that utilities charge the rates on file with the PSC, is amended. The new provision expressly permits rebates in conjunction with revenue or profit sharing plans. Additionally, providers are permitted to offer, for a limited period, rebates in conjunction with promotions and market trials. Commission approval is required on promotional pricing of fully tariffed services. Also, the PSC is permitted to consider complaints and to formulate rules to define the scope of promotional campaigns.

Section 7 (page 14-15) is a new section which requires that prices for regulated telecommunications services must cover relevant costs unless otherwise ordered by the Commission and it gives the Commission authority to consider complaints that services prices do not cover relevant costs.

As I said earlier, the bill before you includes the varied views of parties who have an interest in telecommunications.

I will not suggest that this bill precisely satisfies the interests of everyone involved. But all our efforts have been done in good faith and good compromise. The result, we believe, is an excellent bill which will clarify the Public Service Commission's authority to deal with the rapidly changing telecommunications industry.

This is a permissive bill. But it allows the Commission to adopt regulatory changes that can benefit Montanans through the 90s and beyond. We ask for your support.

Jim Hayhurst
U S WEST Communications
House Judiciary, 2-11-91
HB 610

HOUSE BILL 610 - GLOSSARY

Carrier Access Services:
Carrier Access is provided by a Local Exchange Company when it provides for long-distance companies to reach local customers through its local telecommunications network. Basically, switched access provides a transmission path between a customer and a long-distance company so the customer can initiate a long-distance call or a long-distance company can complete a call to the customer.

Deaverage:
This is a pricing structure for long-distance services in which the price of a call which travels the same distance is priced differently because of such variables as the availability of other services and the cost. For example, calls placed over high-volume, low-cost routes could be priced less than calls placed over low-volume, high-cost routes.

Detariff:
A regulatory action which permits a specific service to be offered at prices which are not specified in a rate schedule (tariff) filed with and approved by the Public Service Commission. The prices charged to customers for these detariffed services are on file with the PSC as "price lists." The service remains under the jurisdiction of the PSC and the revenue received are included in the PSC's review of the provider's earnings.

Forbearance of Regulation:
A procedure by which a provider of a regulated service may request permission to respond to a competitive situation with a price other than the tariffed rate.

Message Telecommunications Service:
The industry term for long-distance service.

Tariff:
A schedule of specific rates to be charged by a regulated provider for a particular service. All regulated telecommunications services are offered to the public at tariffed rates and any changes must be approved by the PSC.

Universal Service:
A long standing public policy and service goal of both the telephone industry and regulatory agencies to make basic telephone service available to the greatest number of people possible at affordable prices.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/11/91
BILL NO. HB 610

PUBLIC SERVICE COMMISSION TESTIMONY
IN FAVOR OF HB 610
March 11, 1991

I am Ivan C. Evilsizer, staff attorney with the Montana Public Service Commission. I am appearing here today to speak on behalf of the Commission in favor of HB 610 (as amended by the House).

This Bill is important for a number of reasons. First, there is some uncertainty as to the PSC's power to approve alternative forms of regulation for telephone companies under current law. This Bill will empower the PSC to approve price caps, earnings-sharing plans and other alternative types of regulation which have already been implemented in many other states. These plans can increase the efficiency incentives of telephone companies, reduce regulatory costs, increase technological innovation, increase economic efficiency, result in sharing of earnings with ratepayers and modernization of the telecommunications infrastructure, and increase economic development in the state.

This Bill (Sec. 3) also increases the flexibility of the Commission to detariff telecommunications services (pricing flexibility and reduced regulatory oversight), when found to be consistent with the public interest and the state public policies established in the 1985 Montana Telecommunications Act (universal service, encouragement of competition, increased access to telecommunications technological advancements and transition to a competitive environment).

2305
(8-78)

NEWS MEDIA REPORT

☒ NEWSPAPER ☐ TV
☐ RADIO ☐ OTHER

ORIGINATED BY ☐ PR ☐ MGR. ☐ NEWS

CITY: Great Falls	NAME OF NEWSPAPER, RADIO/TV STATION OR OTHER MEDIA: Great Falls Tribune
DISTRICT:	PAGE OR TIME: page 3-C / DATE APPEARED: June 14, 1990
STATE: Montana	STORY THEME (Check Only One)
☐ POSITIVE ☐ NEUTRAL ☐ NEGATIVE	☐ CONSUMER ☐ MARKETING ☐ SERVICE ☐ TECHNOLOGY ☐ LEGISLATION ☐ RATES
CO. POSITION INCLUDED? YES___ NO___	☐ OTHER_____ (I.E. FINANCIAL, LABOR, PERSONNEL, CITIZENSHIP, ETC.)

Phone firm files for 5-year rate freeze

HELENA (AP) — U S West Communications Wednesday filed a request with the state Public Service Commission to freeze basic service rates for five years and to spend nearly $80 million on new digital switching offices and long-distance facilities in 112 of Montana's smaller communities.

What Montana Vice President George Ruff called a "new regulatory approach" would give the utility an 11 percent to 12.5 percent rate of return. If the company earned more than 12.5 percent, profits would be shared 50-50 with customers.

Ruff said in the PSC filing that the plan, which could begin in 1991, "includes a rate freeze for residence and business access services such as basic local service.

"We believe the ability to keep rates stable and to offer new and useful services will be of real benefit to our customers," he said.

The earnings range would be reviewed in 1993, and the company could file for higher rates if earnings fell below the range for a year.

Ruff said the plan included three limited exceptions to the freeze. But he added that the company does not expect "frozen" rates to change through most of the plan's five-year life.

He said that "if we manage our business effectively, the plan allows us to earn more than we might have under traditional regulation."

Exceptions to the rate increase, with PSC approval, would be PSC-approved depreciation changes, accounting changes for benefits paid to U S West retirees and other PSC actions that would affect the company financially.

Now that U S West has upgraded equipment in the state's larger cities, "we believe we have a plan that will allow us to finance the investment needed to bring this digital technology — and the service it provides — to customers in the rest of the state," Ruff said.

The largest community to get upgraded facilities would be Havre, and the smallest would have about 100 customers, said U S West spokesman Russ Cravens.

"A myriad of options in telecommunications are not available to the smaller communities, such as call forwarding and three-way calls," Cravens said.

If the plan is approved by the PSC, the company would begin a five-year construction program to install 112 state-of-the-art digital switching offices in the smaller communities, the filing said. In addition, the company would complete a totally digital long-distance network to improve service to all Montana communities.

"We're excited about the potential to upgrade our customers' service through this accelerated improvement plan," Ruff said. "Government leaders, economic development officials and customers are increasingly convinced that a modern telecommunications network is important to business growth and new jobs in Montana."

Ruff said that regulatory commissions around the country are implementing similar regulatory approaches. He said more than half the states and the Federal Communications Commission have adopted new forms of regulation.

Cravens was asked if, after five years, the company would file for a big rate increase because the construction program would have increased the basis for its rate base.

Cravens said that, because of depreciation of older equipment, "I don't see that we're looking at any balloon rate hike at the end of five years."

REMARKS:

2308
(8-78)

NEWS MEDIA REPORT

☑ NEWSPAPER ☐ TV ☐ RADIO ☐ OTHER

ORIGINATED BY ☐ PR ☐ MGR. ☑ NEWS

CITY: Butte
NAME OF NEWSPAPER, RADIO/TV STATION OR OTHER MEDIA: The Montana Standard
DISTRICT:
PAGE OR TIME: p87
DATE APPEARED: Dec 5
STATE: Montana

☐ POSITIVE
☐ NEUTRAL
☐ NEGATIVE

CO. POSITION INCLUDED? YES____ NO____

STORY THEME (Check Only One)

☐ CONSUMER ☐ MARKETING ☐ SERVICE
☐ TECHNOLOGY ☐ LEGISLATION ☐ RATES
☐ OTHER_____
(I.E. FINANCIAL, LABOR, PERSONNEL, CITIZENSHIP, ETC.)

US West seeks rural improvements, rate freeze

By Kevin McRae
Standard State Bureau

HELENA — US West Communications intends to ask the 1991 Legislature to change state law to allow the company to boost profits and improve rural phone services, while freezing basic service rates for five years.

The company's proposal has not yet been approved by the state Public Service Commission, which is considering whether state utility regulators have legal authority to approve US West's requests.

Regardless of the PSC's actions, the company is drafting a bill proposing to change regulation laws in a way that would increase profits and allow $80 million worth of phone improvements during the basic rate-freeze period, US West spokesman Russ Cravens said Tuesday.

Meanwhile, a PSC attorney told commissioners in a meeting Tuesday that he doubted US West's entire request could be granted under current laws the commission must follow.

Despite their apparent disagreement, Cravens and PSC attorney Chuck Evilsizer said in separate interviews that they hope US West and the state agency can cooperate to reach a settlement soon.

US West filed its original request in June, proposing to freeze basic phone service rates for five years and to spend about $80 million on new digital switching offices and long-distance equipment in 112 of Montana's smaller towns.

The request also proposed a new regulatory system that would give the company an allowable rate of return ranging from 11 percent to 12.5 percent. Under the earning-sharing plan, if US West earned more than 12.5 percent, the profits would be shared 50-50 with customers.

US West intends to file a second request later this month, which will resemble the June proposal but will include more cost studies and financial information, Cravens said.

Evilsizer questioned the PSC's legal authority to grant the request, citing laws against "retroactive rate making" and "pre-approval" among his reasons.

State laws for setting rates prohibit backward adjustments such as the profit-sharing plan proposed by US West, Evilsizer said.

Rates are required to be set in advance without variations, he said, adding that a recent Illinois court decision struck down a similar plan by a telephone company in that state.

The plan to finance the $80 million in improvements also could violate laws against pre-approval, requiring that utility improvements be in place and operating before a company can recover the costs in its rates, Evilsizer said.

Cravens said US West did not ask for pre-approval, rather, "We're saying that this proposal would give us the opportunity to fiance these improvements and provide rate stability."

Cravens said several states are adopting alternative regulation methods to keep up with changes in technology and the economy.

Traditional regulation methods, in which government regulators determine a company's allowable profit, were devised to help manage consumer interests when monopolies dominated business, he said. A new system is needed because of new technology and increasing business competition that has emerged within the past 10 years, Cravens said.

REMARKS:

G1

EXHIBIT NO. 3
DATE 3/11/91
BILL NO. HB610

February 11, 1991

Chairman Bill Strizich
House Judiciary Committee
Capitol Station
Helena, MT 59620

Re: House Bill 610 -- Rebuttal of Commissioner Driscoll's Arguments

Dear Chairman Strizich:

Commissioner John Driscoll raised a number of points in opposition to HB 610 that require rebuttal.

1. Driscoll: The bill would "deregulate" U S WEST Communications (USWC).

   RESPONSE: The bill permits the PSC to consider changes in the way telephone providers are regulated -- it has nothing to do with deregulation. As I mentioned in response to a question from Rep. Toole, U S WEST Communications' proposed profit sharing plan is a moderate move away from traditional rate of return regulation, but still relies heavily on annual calculations of a firm's earnings. These are the same calculations that are done today. Driscoll's statement that there would be no way to monitor earnings is wrong.

2. Driscoll: The bill abolishes needed regulatory safeguards.

   RESPONSE: The safeguards listed by Mr. Driscoll (access to records, adequate service, etc.) will all continue to apply under an alternative plan. The ratemaking provisions of Parts 2, 3 and 9 are all that would be changed, and then only if the Commission finds alternative regulation in the public interest.

3. Driscoll: The right to withdraw a modified plan is bad policy.

   RESPONSE: The "right to withdraw" or "veto power" is a common feature of alternative regulation legislation. This feature recognizes that alternative regulation necessarily involves new ways of dividing risks between a company and its customers. While these plans are now common, they are also very new. The right to withdraw is a necessary protection for USWC's shareholders as modified regulatory mechanisms are initiated in this new and changing environment. Withdrawal of the plan would result in a continuation of the existing form of regulation. Therefore, no one would be hurt by the exercise of the power.

   While we are aware of no provision in other states giving a similar power to someone other than the affected company, we support giving this power to the Consumer Counsel, the constitutional agency charged with representing Montana ratepayers. USWC cannot support giving the same right to parties with far more narrow interests, however.

4. Driscoll: The bill gives the PSC too much power.

   RESPONSE: It is true that the PSC will receive additional power to adapt regulation to changing conditions in the industry. But, the power granted is necessary and many safeguards are provided. The only alternative to granting this power is for the Legislature itself to directly determine how regulation should change. The hearing today points out what a complex and time-consuming task telephone regulation is. The PSC, as the Legislature's agent, should have the opportunity to weigh what changes make the most sense.

   Staff Counsel Evilsizer said the PSC staff would scrutinize any alternative regulation plan to ensure that adequate protections for ratepayers would be included in any PSC order approving a plan.

5. Driscoll: Forbearance will "kill" competition.

   RESPONSE: Forbearance simply allows a fully regulated companies to compete. In reality, Montana is more open to competition in the telephone industry than virtually any state. There is no protection for service territories. The market for long-distance services is increasingly competitive. Without forbearance or detariffing, a regulated companies' rates are set by the PSC and competitors know exactly what price they must beat to obtain a customer. Forbearance and detariffing allow a regulated company to compete by moving away from the price that is on file with the PSC and open for the entire public to see. These procedures allow a company like USWC to compete. They don't guarantee that we'll be successful.

6. Driscoll: USWC has not had a full rate case review since divestiture (1984).

   RESPONSE: Our earnings have been examined four times by the Public Service Commission since divestiture, with the most recent case concluded in early 1990. A full rate investigation is currently under way at the PSC.

I would be pleased to further address these or any other points that you might have on this bill.

Very truly yours,

Dennis R. Lopach

cc; Members of House Judiciary Committee

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3/11/91
BILL NO. HB610

March 11, 1991
Cathy Brightwell
AT&T
In Support of HB 610

Good morning, my name is Cathy Brightwell. I am Assistant Vice President, State Government Affairs for AT&T. I am located in Helena.

The Montana Telecommunications Act recognized the need for an orderly transition from a regulated telecommunications industry to a competitive market environment. House Bill 610 provides further incentives to that end.

It allows telecommunications providers to introduce new services in a timely manner, it allows for limited promotions to respond to competitive needs, and it provides safeguards to protect customers of local exchange carriers from anti-competitive behavior.

AT&T believes HB610 will enhance competitive growth and technological advancement in Montana.

We urge you to support this bill.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3/11/91
BILL NO. HB 610

LOCAL 206 IBEW
Clark N. Spranget
Business Manager
406/443-7475
1-800-621-3437
P.O. Box 5654
Helena, Montana 59604

March 11, 1991

Senator J.D. Lynch
President Pro Tempore
Chairman, Business & Industry Committee
Montana State Senate

Dear Senator Lynch,

I am currently Business Manager/Financial Secretary of Local 206, International Brotherhood of Electrical Workers (I.B.E.W.) Just this past summer members of Local 206 and myself worked very hard with local city, county and state officials, as well as our Federal delegation and management to retain or expand the Network Operations Center here in Helena. We were successful in that endeavor.

Today this center employs 43 people and is forecast to grow to 81 employees in the future. The center monitors the workings of the telephone network in Montana, Wyoming and soon to add Utah. As you might guess, this center could be located anywhere. While we think our Montana membership can do the work better than workers in any other state, there are only so many jobs to go around. Also, the center is designed to monitor the operations of modern digital switching offices and facilities that the U S WEST Communications modernization plan calls for. So I worry about keeping a high tech center in Montana if we don't go forward with building the high tech telephone network that I hear Montanans say they want.

In closing, I strongly support HB 610. I feel the legislature should provide the Public Service Commission with clear authority to consider and approve a modernization plan for the betterment of all Montanans.

I thank you for your support and I ask that my comments be entered into the record.

Respectfully submitted,

Clark N Spranget

Clark N. Spranget, Bus. Mgr.
I.B.E.W. Local #206

CNS/sr
cc: file

DATE 3/11/91

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
GENE PHILLIPS	NORTHWESTERN TELEPHONE SYSTEMS	HB610	✓	
Tom SWEENEY	PSC	" "		
Joe Hallman	PSC	" "		
ALEX MANUEL	SEIF	HB610	✓	
Jim Haynhurst	USWEST COMMUNICATIONS	HB610	✓	
Mike Foster	Rep., House Distr. #32	HB854	✓	
Evan Evilsizer	PSC	HB610	✓	
Cathy Brightwell	ATT	HB610	✓	
Bob Nelson	Consumer Counsel	HB610	✓	
BUCK BOLES	MT. CHAMBER	HB 863	X	
Pete Frazier	City-Co Health GT Falls	782	amend ✓	
KEN WILLIAMS	Entech	HB-610	✓	
Jon Dilliard	Dept. of Health	HB 782	✓	
Duane Robertson	Dept of Health	HB 782	✓	
TOM HOPGOOD	GTE	HB610	✓	
Tom Hopgood	Health Ins Assn America	HB854	✓	
Clark N. Sprengel	IBEW Local 206	HB610	✓	
JOAN MANDEVILLE	MONT. TEL. ASSOC.	HB610	✓	
Bill LEARY	Mont. Bankers Assoc	HB863	✓	
Tom Ebzent	US WEST	HB610	✓	
Dave Lewis	RO Investment	HB863	✓	
EVAN BARRETT	Butte Local Dev. Corp.	HB863	✓	
Robyn Young	State Auditor/Securities Dept	HB863	✓	
Henry E Lohse	Hank's Salvage & Recycling	HB782	X	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 12, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 297

Presentation and Opening Statement by Sponsor:

Representative Wilbur Spring, sponsor of the bill, stated that this bill was requested by Andy Bennett, commissioner of insurance. This bill is designed to promote the interests of Montana insurance consumers. It would do so by submitting the mid term cancellation of surplus items of surplus line insurance, and would reduce the cost of surplus line insurance. The bill would also make the Montana law consistent with the federal law. The inconsistences between the Montana law and the federal law presents an enforcement problem for the Montana insurance department. If this bill were enacted into law, chances of abuse would be greatly reduced.

Proponents' Testimony:

Dave Barnhill, deputy insurance commissioner, spoke in favor of the bill (See Exhibit 1).

will be the intent of the legislature that this company be selected on the basis of its geographic makeup from representing the whole state.

Amendments, Discussion, and Votes:

The motion to move the amendments proposed by Senator Tveit passed unanimously.

The motion to move the Barrett amendments passed unanimously.

The motion made to amend section C, changing "may" to "shall" passed unanimously.

Recommendation and Vote:

The motion made that a statement of intent be added to the bill passed unanimously.

The motion made that HB 863 be concurred in as amended passed unanimously. Senator Mazurek will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 610

Motion:

Senator Williams moved that HB 610 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 610 be concurred in passed by a 7 to 2 votes.

ADJOURNMENT

Adjournment At: 11:30 a.m.

J. D. LYNCH, Chairman

DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/12/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	Y		
SENATOR FRANKLIN	Y		
SENATOR GAGE	Y		
SENATOR HAGER	Y		
SENATOR NOBLE	Y		
SENATOR THAYER	Y		
SENATOR WILLIAMS	Y		
SENATOR KENNEDY	Y		
SENATOR LYNCH	Y		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB610 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN		X
SENATOR BRUSKI		X
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: BE CONCURRED IN
LYNCH TO CARRY

DATE 3/12/91

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Robyn Young	State Auditor/Securities	HB248	X	
Dave Barnhill	Insurance dept.	HB 248	X	
Dave Barnhill	Insurance dept.	HB 297	X	
Roger McGlenn	INDEPENDENT INS AGENTS ASSOC. OF MT	HB297	X	
Jacqueline N. Terrell	Am. Ins. Assoc.	HB 197	X	
Jacqueline N. Terrell	Am. Ins. Assoc.	HB 297		X
GENE PHILLIPS	NAT. ASSOC IND. INS ALLIANCE AMER. INS.	HB 197 HB 297	X	X
George Wood	MT. Self Insurers Assn	HB197	X	
Michael J Sherwood	MTCA	HB197	X	
[illegible]	[illegible]	HB411	[illegible]	
MARY AKEY	MT ASSOC OF LIFE UNDERWRITERS	HB288	X	
Nancy Butler	State Fund	HB197	X	

(Please leave prepared statement with Secretary)

SENATE STANDING COMMITTEE REPORT

March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 610 (third reading copy -- blue), respectfully report that House Bill No. 610 be concurred in.

Signed: _____
John "J.D." Lynch, Chairman

LB 3/12/91
Amd. Coord.

JL 3/12 1:00
Sec. of Senate

531152SC.SBB

HOUSE BILL NO. 610

INTRODUCED BY BRADLEY, MERCER, DRISCOLL, MAZUREK, KELLER, WYATT, HARP, B. BROWN, CRIPPEN, FORRESTER, STRIZICH, LEE, SQUIRES, STICKNEY, COCCHIARELLA, T. NELSON, DARKO, BECKER, R. JOHNSON, WHALEN, LYNCH, WILLIAMS, KEATING, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES; AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING; PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES; AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority.

STATEMENT OF INTENT

A STATEMENT OF INTENT IS NECESSARY FOR THIS BILL BECAUSE [SECTION 8] GRANTS THE PUBLIC SERVICE COMMISSION GENERAL RULEMAKING AUTHORITY AND [SECTION 6] GRANTS THE COMMISSION AUTHORITY TO ADOPT RULES RELATING TO THE APPROPRIATE SCOPE OF PROMOTIONS, REBATES, AND MARKET TRIALS. THE LEGISLATURE INTENDS THAT IF RULES ARE ADOPTED BY THE COMMISSION, THE RULES SHOULD PERMIT REASONABLE FLEXIBILITY TO PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES IN THE MARKETING OF THEIR SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-802, MCA, is amended to read:

"**69-3-802. Purpose.** The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service

at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services."

NEW SECTION. **Section 2.** **Alternative forms of regulation.** (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be

issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest; ~~and~~

(F) WILL ENHANCE ECONOMIC DEVELOPMENT IN THE STATE;

(G) WILL RESULT IN THE IMPROVEMENT OF THE TELEPHONE INFRASTRUCTURE IN THE STATE; AND

~~(f)~~(H) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day

period, the provider may withdraw its petition for alternative regulation OR THE CONSUMER COUNSEL MAY OBJECT TO THE PROPOSED ORDER. If a petition for alternative regulation is withdrawn OR THE CONSUMER COUNSEL OBJECTS TO THE PROPOSED ORDER, the provider~~,~~:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter.

Section 3. Section 69-3-807, MCA, is amended to read:

"**69-3-807. Regulation of rates and charges.** (1) As to ~~that~~ telecommunications service ~~which~~ that is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of ~~such~~ the service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under ~~such~~ terms and conditions ~~as may~~ that best serve the declared policy of this state. FOR A SERVICE DETARIFFED UNDER THIS SUBSECTION, THE PROVIDER SHALL MAINTAIN A CURRENT PRICE LIST ON FILE WITH THE COMMISSION AND SHALL PROVIDE NOTICE OF CHANGES IN THE PRICE LIST AS PRESCRIBED BY THE COMMISSION. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

~~(c)--detariff--rates-but-require-notice-of-price-changes to-the-commission-and-subscribers;~~

~~(d)~~(C) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

~~(e)~~(D) provide such other rate or service regulation as will promote the purposes of this part.

(3) ~~In~~ Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) ~~such~~ other factors ~~as~~ that the commission may prescribe through rulemaking ~~which~~ that are appropriate to fulfill the purposes of this part.

~~(4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services~~ Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(C) with respect to ~~the~~ ANY services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. ~~Carrier~~ NONCOMPETITIVE LOCAL EXCHANGE ACCESS TO END-USERS AND CARRIER access services may not be detariffed. ~~Services detariffed under this subsection must be priced above relevant costs.~~

(5) A provider of regulated message telecommunications service and related services shall average its service rates

on its routes of similar distance within the state unless otherwise authorized by the commission. Nothing contained in this subsection may be construed to prohibit volume discounts, DISCOUNTS IN PROMOTIONAL OFFERINGS, OR other discounts as long as the discounts are not offered in a discriminatory manner~~, or other discounts in promotional offerings~~.

~~(5)~~(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.

~~(7) The commission retains jurisdiction to consider complaints that prices charged for a service detariffed under this section are below relevant costs or violate a provision of this title.~~"

Section 4. Section 69-3-808, MCA, is amended to read:

"**69-3-808. Forbearance of rate regulation to facilitate competition.** (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or

negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application ~~shall~~ must describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with ~~such~~ other information and in ~~such~~ a form ~~as~~ that the commission may prescribe. ~~Such~~ The additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing ~~such~~ the service.

(3) The commission shall approve or deny ~~any such~~ an application for forbearance of regulation to facilitate competition within ~~10~~ 15 days after the filing of the application~~, except that the commission may by order defer action for an additional 5-day period~~. If the commission has not acted on ~~any~~ an application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or

similar service is not being offered to the customer by parties other than the applicant. If a customer OR POTENTIAL CUSTOMER of the provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the commission, the commission ~~shall~~ MAY presume the existence of competition.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with ~~such~~ a person or an entity for the provision of ~~such~~ the service without regard to its tariffs OR PRICE LISTS on file ~~and approved by~~ WITH the commission.

(6) Within 10 days after the conclusion of ~~such~~ the negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, FOR THE TERM OF THE CONTRACT, the provider of regulated telecommunications service may provide ~~such~~ the service to the customer without regard to its tariffs OR PRICE LISTS on file ~~and approved by~~ WITH the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission."

NEW SECTION. **Section 5.** New service -- withdrawal of services. (1) A provider of regulated telecommunications service shall provide ~~the--commission-with~~ notice, IN THE FORM PRESCRIBED BY THE COMMISSION, of its intent to offer a new service to its customers ~~at-least-14-days-before-the service-is-to-be--made--available--and--shall--provide.~~ THE NOTICE MUST INCLUDE a description of the service, A MINIMUM PRICE, and the terms and conditions under which it will be offered. ~~If--the-commission,-either-on-its-own-motion-or-in response-to-the-objection-of--an--interested--person,--finds that--the--offering--may--not--meet-the-requirements-of-this title-or-of-commission-rules,-it-may,-after-hearing,-require the-provider-to-submit-a-proposed-tariff-for-the-service.~~ AT THE END OF A 10-DAY COMMENT PERIOD FOR INTERESTED PARTIES, THE COMMISSION MAY IMMEDIATELY APPROVE, SUSPEND, OR DISAPPROVE THE NEW SERVICE OFFERING OR IT MAY ALLOW THE INTERIM INTRODUCTION OF THE SERVICE PENDING A HEARING AT A LATER DATE. If the commission has not acted at the end of ~~14~~ 30 days FOLLOWING ISSUANCE OF NOTICE, the provider may proceed to offer the service.

(2) A new service may be offered on a detariffed basis, ~~and--must--be--priced--above--relevant--costs.~~ A price list containing the price of the new service must be filed with the commission at the time the service is offered to the public. ~~The-commission-may-require-the-filing-of--supporting cost-information.~~

(3) FOR PURPOSES OF THIS SECTION, "NEW SERVICE" MEANS ANY SERVICE THAT IS INTRODUCED SEPARATELY OR IN COMBINATION WITH OTHER SERVICES AND THAT IS NOT FUNCTIONALLY REQUIRED TO PROVIDE LOCAL EXCHANGE SERVICE OR THAT IS NOT A REPACKAGED CURRENT SERVICE OR A DIRECT REPLACEMENT FOR A REGULATED TELECOMMUNICATIONS SERVICE.

~~(3)~~(4) A provider of regulated telecommunications service may withdraw a service upon 30 days' notice to the commission and to the users of the service. The commission may, however, suspend the withdrawal of the service, either on its own motion or at the request of an interested person, and shall then proceed to hearing. ~~The-withdrawal-must-be permitted-if-the-commission-finds-that-the--service--is--not required-by-public-convenience-and-necessity.~~

Section 6. Section 69-3-305, MCA, is amended to read:

"69-3-305. Deviations from scheduled rates, tolls, and charges. (1) ~~It-shall-be-unlawful-for-any~~ A public utility to may not:

(a) charge, demand, collect, or receive a greater or less compensation for ~~any~~ a utility service performed by it within the state or for any service in connection ~~therewith~~ with a utility service than is specified in ~~such~~ the printed schedules, including schedules of joint rates, ~~as~~ that may at the time be in force;

(b) demand, collect, or receive ~~any~~ a rate, toll, or charge not specified in ~~such~~ the schedules; or

(c) grant ~~any~~ a rebate, concession, or special privilege to ~~any~~ a consumer or user, ~~which~~ that, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named ~~therein shall~~ be in the printed schedules are the lawful rates, tolls, and charges until the ~~same~~ rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may ~~in its discretion~~ order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under [section 2]. Additionally, a provider of regulated telecommunications service may offer, FOR A LIMITED PERIOD OF TIME, either rebates or reductions or waivers of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. ~~The commission has jurisdiction to consider whether a particular sales activity under this subsection is unfairly discriminatory or is not~~

~~cost-effective.~~ PROMOTIONAL PRICING OF SERVICES THAT REMAIN FULLY TARIFFED REQUIRES ADVANCE APPROVAL OF THE COMMISSION. NO PROMOTIONAL OFFERING MAY COMBINE MONOPOLY SERVICES WITH COMPETITIVE SERVICES. The commission may define the appropriate scope of promotions, rebates, and market trials, either by rule or in response to complaints. THE COMMISSION MAY DETERMINE WHETHER A PARTICULAR SALES ACTIVITY UNDER THIS SUBSECTION IS UNFAIRLY DISCRIMINATORY OR IS NOT COST-EFFECTIVE. COSTS AND EXPENSES INCURRED OR REVENUE FOREGONE WITH RESPECT TO SALES ACTIVITIES THAT THE COMMISSION DETERMINES ARE UNFAIRLY DISCRIMINATORY OR NOT COST-EFFECTIVE ARE THE RESPONSIBILITY OF THE PROVIDER'S SHAREHOLDERS IN RATES SET BY THE COMMISSION.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

NEW SECTION. **SECTION 7.** COSTS FOR SERVICES PROVIDED -- JURISDICTION OVER COMPLAINTS. (1) PRICES CHARGED FOR A REGULATED TELECOMMUNICATIONS SERVICE MUST BE ABOVE RELEVANT COSTS UNLESS OTHERWISE ORDERED BY THE COMMISSION. IF THE COMMISSION DETERMINES THAT A PRICE IS BELOW RELEVANT COSTS, IT MAY ENSURE THAT SHAREHOLDERS AND NOT RATEPAYERS ARE RESPONSIBLE FOR ANY RELEVANT COSTS NOT RECOVERED THROUGH

PRICES.

(2) WITH REGARD TO COMPETITIVE SERVICES, THE TERM "RELEVANT COSTS" INCLUDES THE PRICE FOR ANY COMPONENTS THAT ARE USED BY THE TELECOMMUNICATIONS PROVIDER AND THAT WOULD BE ESSENTIAL FOR ALTERNATIVE PROVIDERS TO USE IN PROVIDING THE COMPETITIVE SERVICES PURSUANT TO COMMISSION-APPROVED METHODOLOGY.

(3) THE COMMISSION HAS JURISDICTION TO CONSIDER COMPLAINTS AND INITIATE INVESTIGATIONS TO DETERMINE WHETHER THE PRICE CHARGED BY A PROVIDER OF REGULATED TELECOMMUNICATIONS SERVICE IS ABOVE RELEVANT COSTS. THE COMMISSION MAY ALSO CONSIDER COMPLAINTS THAT A PRICING OR PROMOTIONAL PRACTICE VIOLATES ANY PROVISION OF THIS TITLE.

NEW SECTION. **SECTION 8.** RULEMAKING AUTHORITY. THE COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS PART.

NEW SECTION. **Section 9.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10.** **Codification instruction.** (1) [Sections 2 and, 5, AND 7] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to

[sections 2 and, 5, AND 7].

(2) [SECTION 8] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, PART 3, AND THE PROVISIONS OF TITLE 69, CHAPTER 3, PART 3, APPLY TO [SECTION 8].

NEW SECTION. **Section 11.** **Effective date.** [This act] is effective on passage and approval.

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